



Written Statement of the
National Petrochemical & Refiners Association

delivered by
Bob Slaughter
President, NPRA

before the
Subcommittee on Energy and Air Quality

concerning
The Energy Policy Act of 2005

16 February 2005
Washington, DC

Statement Summary of Bob Slaughter, President, NPRA

NPRA, the National Petrochemical & Refiners Association, supports policies that both encourage the production of an abundant supply of petroleum-based products for U.S. consumers, and promote a robust and diverse energy supply mix for all sectors.

NPRA urges Congress to enact comprehensive energy legislation that incorporates the necessary, and in our opinion long overdue, provisions affecting both transportation fuels and natural gas supply. We believe that such action will help ensure that adequate supplies of energy resources are produced domestically. Further, such congressional actions will provide that environmental and energy policymaking, which are most often executed separately, are integrated and the costs and benefits of new regulatory or legislative requirements will therefore be carefully analyzed and balanced.

NPRA's proposals for comprehensive national energy legislation are as follows:

A. Transportation Fuels

1. **Repeal The 2% RFG Oxygenation Requirement**, which will provide fuel producers more flexibility and the fuel markets more stability.
2. **Avoid Fuel Bans**, which only serve to reduce supply.
3. **Resist Calls for an Ethanol Mandate**, which add both cost and unnecessary complications to fuel supply and environmental goals.
4. **Support Limited Liability Protection for Mandated Fuel Components**, which merely provides fair treatment to all.
5. **Avoid Unnecessary Changes in Fuel Specifications**, which will limit options and could reduce supply. Repeal of the 2% RFG oxygenation requirement is the most efficient approach to address the issue of fuel proliferation.

B. Balance Natural Gas Supply And Demand

Past and current federal policy regarding natural gas limits access to federal lands and thus has reduced the number of places where gas may be produced. These policies have also imposed restrictive regulations that discourage investment in pipelines needed to bring new gas to market. At the same time, conflicting policies are encouraging increased gas use as a cleaner burning fuel. NPRA urges this Committee and the Resources Committee to review the natural gas supply situation. NPRA recommends that particular attention be paid to the following:

1. **Timely issuance of leases and permits.**
2. **Federal lands should be leased for multi-purpose uses, including natural resource production and required infrastructure improvements.**
3. **The Energy Policy & Conservation Act (EPCA) of 2000 should mandate a second phase that would promote additional onshore leasing.**
4. **In general, rationalize policies impacting fuel consumption that allows for increased utilization of all domestically produced energy resources, especially coal and nuclear.**

C. Domestic Refining Capacity Should Increase To Help Meet the Growing Demand for Fuel

NPRA urges Congress to review and adopt the recommendation of the National Petroleum Council regarding Domestic Refinery Capacity and Inventories.

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you today to discuss the need for a comprehensive U.S. energy policy. My name is Bob Slaughter, and I am President of NPRA, the National Petrochemical & Refiners Association.

NPRA is a national trade association with about 450 members who own or operate virtually all U.S. refining capacity, as well as petrochemical manufacturers who operate similar manufacturing processes. NPRA's refining members include large integrated refiners, large independent refiners, regional independents, and small refiners.

The refining and petrochemical industries produce clean transportation fuels to power today's sophisticated engines, provide a steady supply of home heating oil, and manufacture the basic building blocks of items that touch every aspect of our daily lives. The prospects for success in the refining and petrochemical industries are based upon the efficient, economic rearrangement of the links between hydrocarbon molecules. Our remarks today will concern links as well. There is a link between energy and economic strength for the United States; there is a link between energy and the continued development of innovation and discovery, and another link between energy and our national security.

These links are in some jeopardy today. Our energy policies do not reflect the importance of supply. For too long government actions, especially in the environmental area, have inadequately balanced energy supply impacts with other policy objectives.

NPRA supports the development and use of cleaner-burning fuels to meet health and environmental goals while maintaining adequate supplies to meet the demand of the motoring public and basic consumer. We believe that this can best be achieved if energy and environmental policymaking are integrated, and if the costs and benefits of new regulatory or legislative requirements are carefully analyzed and balanced so that any adverse impact on energy supplies is both assessed and mitigated. We urge caution in attempts to promote agriculture or social policy as part of this process. The politics of the moment often result in adoption of policies that run counter to overall national concerns and objectives.

With these thoughts in mind, NPRA sincerely appreciates the opportunity to address the subcommittee today and to present our views on the need for comprehensive energy legislation. Simply stated, NPRA supports policies that both encourage the production of an abundant supply of petroleum-based products for U.S. consumers and that promote a robust and diverse energy supply mix for all sectors.

I. Energy Policy

In March of 2003, nearly two years ago, NPRA also had the privilege to appear before the Subcommittee on Energy and Air Quality concerning this same subject. In summarizing NPRA's energy policy recommendations at that time, we urged Congress to: repeal the 2% RFG oxygenation requirement; avoid a federal ban or mandatory phase-out of MTBE; resist calls for an ethanol mandate; extend product liability protection to MTBE and ethanol; avoid unnecessary changes in fuel specifications, including boutique fuels; take steps to increase natural gas production and supply; and ensure the continued viability of combined heat and power systems as the electricity industry transitions to a more competitive model.

NPRA urges you again today to enact comprehensive energy legislation that incorporates our proposals. We realize that the House of Representatives has acted boldly and with conviction in passing H.R. 6 on at least 3 separate occasions. Unfortunately, enactment of comprehensive energy legislation remains elusive. NPRA members hope that this subcommittee, the full committee and the House will again take the lead on this crucial legislative initiative by passing once again the fuels provisions of the H.R. 6 conference report, as currently proposed in the Energy Policy Act of 2005.

NPRA would like to review our specific recommendations in more detail:

A. Transportation Fuels

1. Repeal The 2% RFG Oxygenation Requirement, Fuel Producers Need More Flexibility

Repeal of the 2% by weight RFG oxygenation requirement [Clean Air Act section 211(k)] is key to provide refiners with more flexibility to meet supply and air quality requirements, and is the lynchpin for other much-needed modifications to the fuels provisions of the Act. Elimination of the 2% requirement will give refiners increased flexibility to deal with changing market conditions. It will also permit them to blend gasoline to meet the standards for reformulated gasoline more efficiently and economically, without mandated oxygenate content. NPRA also supports the petitions filed by the states of California and New York to waive the existing 2% RFG oxygenation requirement pending enactment of a federal repeal. We urge this subcommittee to monitor closely the EPA response to these petitions, which are long overdue for final approval.

2. Avoid Fuel Bans – They reduce supply.

NPRA remains concerned about proposals to ban MTBE nationally or to mandate a national phase-down of MTBE. MTBE elimination may cause a

significant reduction in some gasoline volumes when fully implemented. (MTBE provides over 10% of RFG volume in many RFG areas.) NPRA is concerned about the possible impact of such policies on gasoline supply and manufacturing costs. The supply and demand balance in the nation's gasoline market is increasingly tight. Supply and price can be affected by weather, unforeseen outages, and accidents, resulting in economic losses and negative public reaction, and we are seeing this happen with increasing frequency. EIA predicted that an MTBE ban could raise the national average price of RFG in 2006 by several cents per gallon and reduce supply. ("Supply Impacts of an MTBE Ban," EIA, September 2002) Recent experience in the gasoline market suggests that such significant changes should be made only with an abundance of caution, and with full disclosure to the public regarding any possible supply and cost impacts. At a minimum, prudence requires much deliberation and thought before acting to reduce gasoline supplies.

EIA noted in a presentation in October 2003: "MTBE is a very clean component from an air emission standpoint. It contains oxygen and has no sulfur, no aromatics, no olefins and an RVP that is very close to the RVP of the remaining gasoline components." The author also wrote: "What is not appreciated by many people outside of the petroleum business, is that losing MTBE is more than just losing the volumes of this blending component...no other hydrocarbon or oxygenate equals the emission and engine performance characteristics of MTBE. Hence, losing a barrel of MTBE results in losing more

than a barrel of gasoline production. When you remove a clean, high performance gasoline stream from the gasoline pool, it is difficult to find material to replace its volume and quality contributions." (EIA, J. Shore, "Supply Impact of Losing MTBE & Using Ethanol," October 2002, pp. 10, 12)

Recent EIA studies confirm that elimination of MTBE could also affect many refiners' abilities to comply with the Mobile Source Air Toxics (MSAT) rule, which requires refiners to maintain their average 1998-2000 gasoline toxic emission performance levels. The result might be that some refineries would have to reduce their production of RFG to achieve compliance. Exacerbating the MSAT problem is EPA's recent announcement that it will propose revisions to the MSAT rules that will further alter gasoline composition and emissions.

3. Resist Calls for an Ethanol Mandate – Avoid Added Cost and Complications

Many NPRA members already use large volumes of ethanol, and they expect to increase their ethanol usage in the years ahead. EIA and other policy analysts also predict a significant increase in ethanol markets in coming years, without a mandate. Thus, given the relative scarcity of quality gasoline blend stocks, ethanol has a bright future without any need to resort to the dubious policy of a national ethanol mandate.

As a state that is at the forefront of fuel specifications, California has experienced and continues to experience problems with bans and mandates. According to the California Energy Commission (CEC), the state substantially overestimated the cost of addressing the perceived MTBE water problem (\$1.5 billion vs. \$200 million), while it substantially underestimated the costs of replacing MTBE with ethanol in gasoline (\$400 million vs. \$1.6 billion).

Further, a September 2004 study from the California Air Resources Board and the Auto industry confirms that the permeation effects from ethanol blended fuels are 65% greater than from fuels with MTBE. For California, this translates into significant additional VOC emissions to the atmosphere.

Refiners have worked with ethanol suppliers and other stakeholders to achieve a transition to ethanol use as smoothly as possible given the magnitude of the RFG markets in California, New York and Connecticut. NPRA views ethanol as a valuable gasoline blendstock, and we are certain that significant quantities of the product—quantities much larger than today's record use—will be required to meet the ever-increasing demand of the motoring public in the years to come. This means that a mandate will only increase the cost of material that would have been used in any case. NPRA requests that economic and environmental considerations be allowed to dictate the quantity and geographic location of ethanol's use. Mandates (and bans) are inefficient and costly mechanisms that only serve to distort true marketplace dynamics and inhibit

innovation. NPRA urges the committee to make a clean break with the market intervention theory typified by both the existing 2% requirement and calls for an ethanol mandate to replace it.

4. Support Limited Liability Protection for Mandated Fuel Components

The Energy Policy Act of 2005 contains a narrow provision that (1) would disallow suits against the manufacturer of fuel containing MTBE or a renewable fuel, (2) only on a claim that the product is defective, (3) if that product is made and used as intended and as approved by EPA.

This provision preserves other causes of action, such as negligence, trespass, breach of warranty, breach of contract, and public nuisance. The provision does not affect liability under federal and state environment laws and therefore would not affect a responsible party's obligation for response, remediation, and clean up.

The Act includes the same limited liability provision for both MTBE and renewable fuels.

This provision merely provides fair treatment. In 1990, Congress established the Reformulated Gasoline (RFG) program mandating the use of oxygenates in gasoline in cities with the worst U.S. air quality. The authors of the

bill acknowledged on the floor of the House and Senate that fuel manufacturers would have to use significant volumes of MTBE to comply with this federal requirement. EPA also approved the use of MTBE as a fuel additive.

Despite this compelling evidence of the intent of Congress and the approval of the key regulatory agency, some manufacturers are now being sued just because they use MTBE as an additive in gasoline. Yet this use is exactly what Congress mandated some 14 years ago and EPA approved.

The provision disallows only a defective product claim. Under a defective product claim, a defendant can be found liable simply by making a product for sale, even if he exercised proper care. Thus, by adding a defective product count to a lawsuit, the plaintiff can bypass all the usual legal requirements to establish wrongdoing.

The limited liability provision only affects manufacturer liability under this extraordinary defective product claim. It says suppliers cannot be sued under a defective product claim for simply transporting, distributing, or selling gasoline containing MTBE or a renewable fuel, just as intended by Congress and approved by EPA.

Many legal causes of action remain available if gasoline with MTBE or ethanol is mismanaged. For example, if any such gasoline is spilled or leaked,

those responsible remain liable for legal action under classic tort theories such as negligence, trespass, breach of warranty, breach of contract, and public nuisance.

Elimination of the defective product claim will not affect cleanup. In fact, litigation is the least effective way to achieve groundwater cleanup. The vast majority of cleanups are initiated with no a need for litigation. Further, the Act provides an additional \$800 million to clean up of leaks and spills of fuel containing MTBE or ethanol in those few cases in which responsible parties cannot be identified.

Once again, the Energy Policy Act's fuel additive limited liability provision simply removes a cause of action that results in a suit against manufacturers for doing properly exactly what Congress intended them to do. It is based on fundamental fairness and common sense.

5. Avoid Unnecessary Changes in Fuel Specifications

The refining industry faces significant investment requirements—on the order of \$20 billion this decade—to comply with regulations to improve the environmental performance of both gasoline and diesel fuel in coming years. Significant additional investments will also be required to respond to regulations affecting facilities. NPRA urges the subcommittee and committee to avoid any

additional fuel specification changes while work is in progress to comply with the existing requirements. Particular care should be used in responding to calls to address "boutique fuel" gasoline programs. In many cases these programs represent a local area's attempt to address its own air quality needs in a more cost-effective way than with reformulated gasoline. NPRA welcomes further study of the "boutique fuels" phenomenon, but urges members of the committee to resist imposition of boutique fuels limitations. The practical effect of regulating boutique fuels is to deny state and local governments a way to meet stringent environmental requirements in the most cost effective manner.

The Boutique Fuels provisions in the Act stipulate that EPA and DOE perform a comprehensive analysis of the impact of state requests for specialized fuels on (1) air quality, (2) the overall number of boutique fuels, and (3) fuel availability and cost. The bill also requires recommended legislative changes to be submitted to Congress within 18 months.

NPRA believes the Act's language to be a prudent approach. U.S. gasoline and diesel fuel specifications are currently undergoing substantial modifications as a result of several regulatory programs, as well as other changes that will result with final enactment of the Energy Policy Act of 2005. These new programs, including repeal of the 2% oxygenate requirement, will effectively address the boutique fuels issue.

B. Balancing Natural Gas Supply and Demand

America's standard of living and overall economic health are closely linked to the need for adequate supplies of energy at reasonable prices. Our nation currently faces severe challenges as it strives to balance ever-increasing energy demands from all consuming sectors, largely due to contradictory and short-sighted policies that have limited supply of many forms of energy. This is especially the case with domestic natural gas production. Our national policy actually discourages domestic gas production while encouraging increased U.S. consumption!

In recent years, domestic demand for natural gas has substantially increased, while production has recently decreased. Our experience with volatile natural gas prices and short supplies over the last several winters was a reality check for the nation's flawed policies, and we must act now to correct that situation. Government, industry, and other private experts agree that natural gas demand is expected to rise by the year 2020 by as much as 60% over today's levels. But it is still unclear whether and to what extent domestic gas production will be allowed to increase to satisfy as much as possible of this new demand from U.S. sources.

Current policies discourage U.S. gas production and supply in several ways. But two aspects are most significant. Federal policy has:

- limited access to federal lands and thus reduced the number of places where gas may be produced, while at the same time encouraging more gas use as a cleaner burning fuel; and it has
- imposed restrictive regulations that discourage investment in pipelines needed to bring new gas to market;

There is, on the other hand, some good news. The U.S. Geological Survey estimates that the U.S. has 1,400 trillion cubic feet of technically recoverable natural gas resources. Thus, the U.S. is not running out of gas; it is just running out of places where industry is allowed to look for it. **Further and NPRA believes most telling, the U.S. is the only developed country that prohibits much off-shore exploration and development of natural gas.** U.S. energy policy should encourage greater access and development opportunities on onshore public lands as well as those on the Outer Continental Shelf. New and promising domestic areas for development must also be open for exploration and production. An Alaskan natural gas pipeline should be built to tap more gas and transport it to the lower 48 states as soon as economically feasible.

For all these reasons, NPRA urges this Committee and the Resources Committee to review the natural gas situation. NPRA recommends that particular attention be paid to the following:

- Timely issuance of leases and permits—DOI has indicated that over 1,000 various stipulations impede resource development on federal lands. Federal agencies should be required to update resource management plans and to process environmental reviews of proposed natural gas pipelines and drilling programs in a timely, efficient manner.

- Federal lands should be leased for multi-purpose uses, including natural resource production and required infrastructure improvements—All too often and especially in the Rocky Mountain region, these lands are systematically placed off-limits for development through unnecessary and increasingly stringent restrictions.

- The Energy Policy & Conservation Act (EPCA) of 2000 should mandate a second phase that would promote additional onshore leasing—Issued in 2003, the Phase I study identified and assessed resource estimates and outlined the impediments to development in five onshore basins. Congress should require a Phase II project that will investigate the post-sale impediments to development of the areas/resources.

There is also a problem on the demand side of the equation. For too long, the impact of environmental legislation and/or regulations on natural gas supply have had little or no consideration when these policies are developed. This has resulted in programs which encourage increased gas use—mostly in the generation of both base and peak-load electricity—because of its environmental benefits. This has led to (and will most likely continue to exacerbate) higher gas prices and volatility. In fact, EIA reports that demand by electricity generators is expected to account for 30% of total natural gas consumption in 2025. This equates to a doubling of gas use by the utility sector over current demand. If present policies continue, it is clear that adequate supplies will not be available to accommodate this demand figure unless current natural gas users in core industries are forced to switch fuels, close, or relocate operations to a more favorable supply situation outside of the U.S. In the process, we will lose billions of dollars in economic benefit to the U.S. economy along with many thousands of well-paying jobs.

The domestic petrochemical industry relies upon natural gas and natural gas liquids as feedstocks. About 70% of U.S. petrochemical manufacturers use natural gas liquids as feedstocks. In contrast, about 70% of petrochemical producers in Western Europe and Asia use naphtha an oil product, as a feedstock.

The U.S. has generally maintained a reasonable-cost feedstock position relative to its competitors in Europe and Asia. However, that situation has eroded as the price of natural gas has increased due to supply concerns. North American natural gas and natural gas liquids prices have risen and placed a significant portion of the domestic petrochemical industry at a disadvantage to European and Asian producers. The Middle East countries are attracting many new petrochemical plants because their gas supplies are vast and very cheap in comparison with the U.S.

Chemical product exports are usually significant contributors to U.S. trade receipts. Unfortunately, natural gas supply concerns have impacted the already depressed chemical export market, resulting in a negative trade balance in recent years. This negative trade balance allows foreign businesses to capture U.S. market share, in part because European and Asian producers are not experiencing similarly increased feedstock prices and supply concerns.

Based on the above, we recommend the following demand-side policy options be adopted:

- Provide appropriate incentives for facilities with dual fuel capability to switch from gas to more abundant fuels, especially when supply concerns exist.

- Federal, state and local governments should encourage electric utilities and industrial facilities to use fuels other than natural gas during the current shortage where this can be done without negative impacts on air quality.
- Provide sufficient funds for the increased use of clean coal technology, more nuclear and hydro-power generation, and other forms of energy used to generate electricity. This will displace gas supplies for use as feedstock and home heating.
- Electricity generating units which use natural gas as a primary fuel should be dispatched based on fuel efficiency. Fixed cost components of existing units should be secondary relative to fuel efficiency. Emergency plans, including temporary air quality exemptions or waivers, should be developed by FERC, DOE and EPA when supplies of preferred fuels become inadequate.
- Review environmental regulations or enforcement actions which require the use of natural gas to achieve air quality standards. A primary example is EPA's action to require refiners and other manufacturers to switch to natural gas with no attention to the impact on total gas supply.

- Codify Executive Order # 13211, which requires a statement of energy impacts when undertaking certain federal/regulatory actions. These include potential impacts on energy supply, distribution, or use.
- Review public policy initiatives such as fuel mandates and global climate change proposals that have the potential to impact natural gas supplies because they may encourage even greater reliance on natural gas to generate electricity.

II. The U.S. Refining Industry

Before addressing the current state of the U.S. refining industry, NPRA wants to reaffirm its commitment to the orderly production and use of cleaner-burning fuels to address health and environmental concerns, while at the same time maintaining the flow of adequate and affordable gasoline and diesel supplies to the consuming public. Our cleaner fuels and facilities will greatly benefit the environment.

For example, according to EPA, the new Tier II low sulfur gasoline program, initiated in January 2004, will have the same effect as removing 164 million cars from the road when fully implemented. Since 1970, clean fuels and clean vehicles account for about 70% of all U.S. emission reductions from all sources, according to EPA. Over the past 10 years, U.S. refiners have invested

about \$47 billion in environmental improvements, much of that to make cleaner fuels.

In order to fully appreciate the impact of environmental regulations on fuel supply, we should first consider the dynamics of current gasoline markets. It is important to begin with the most significant factor affecting gasoline prices: crude oil. The cost of crude oil represents about 45% of the total cost of a finished gallon of gasoline. Crude oil prices have increased nearly 67% since April 2003, once having crossed the \$50 per barrel threshold. High demand for crude from Asia and the U.S., plus OPEC activities to restrain crude production in recent years, are the most important factors affecting crude prices.

The other key factor underlying current gasoline market conditions is the tight supply/demand balance. This is due to steadily increasing gasoline demand (growing population, Americans drive larger vehicles greater distances) and the meager growth in refining capacity in the United States. Due to U.S. economic recovery, the U.S. Energy Information Administration (EIA) estimates that growth in our already significant gasoline demand averages 1.7%. Gasoline demand currently amounts to approximately 9 million barrels per day. Domestic refineries produce about 90 percent of U.S. gasoline supply, while 10 percent is imported. Therefore, growing demand can only be met by either increasing domestic refinery production or by relying on more foreign gasoline imports.

A. Domestic Refining Capacity Should Increase To Help Meet the Growing Demand for Fuel

Domestic refining capacity is a scarce asset. There are currently 149 U.S. refineries owned by almost 60 companies in 33 states. Their capacity is roughly 16.8 million barrels per day. In 1981, there were 321 refineries in the U.S. with a capacity of 18.6 million barrels per day. No new refinery has been built in the United States since 1976, and it is unlikely that one will be built here in the foreseeable future, due to economic, public policy and political considerations, including siting costs, environmental requirements, rate of return and, most importantly, "not in my backyard" (NIMBY) public attitudes.

U.S. refining capacity has increased slightly in recent years, but it has become increasingly difficult to keep pace with the growth in demand for petroleum products. New refineries have not been built, but refiners have increased capacity at existing sites to offset the impact of capacity lost elsewhere due to refinery closures. It has now become harder to add capacity at existing sites due in part to more stringent environmental regulations. Proposed capacity expansions can often become difficult and contentious at the state and local level, even when necessary to produce cleaner fuels pursuant to regulatory requirements. We hope that policymakers will recognize the importance of domestic refining capacity expansions to the success of the nation's

environmental policies, and help inform the public of the need for these facility improvements.

Domestic refiners do not produce all of the transportation fuels needed to meet the demand of the nation's consumers. On average, about 10% of the demand volume is imported, either as finished product or as blending components that can be added to the gasoline and diesel pool. The current level of U.S. refinery capacity, resulting from lack of new construction but with some expansion at existing facilities, will result in a need to import ever-increasing volumes of transportation fuels from foreign refineries.

B. The National Petroleum Council Refinery Study Recommendations

With these circumstances as a backdrop, the Secretary of Energy, in June 2004, requested that the National Petroleum Council (NPC) a key advisory group, provide advice on issues surrounding domestic refining capacity, product imports, and inventories. The Secretary requested that the Council's advice be provided on an expedited schedule and a final report was presented to the Secretary in December 2004. NPRA was one participant among many in the study group.

The NPC review of refining and inventory issues presents observations on petroleum product supply and a response to the Secretary's request for advice on both refining and inventory issues. It is intended to update the 1998 and 2000

NPC reports on these subjects. The report provides insights on petroleum market dynamics, as well as advice on actions that can be taken by industry and government to ensure adequate and reliable supplies of petroleum products to meet the energy and environmental requirements of American consumers. The report recommends actions that, if implemented, would:

- help avoid policies that hinder refining capacity expansions;
- improve the environment for investment in domestic refining and logistics capability; and
- allow the current supply system to continue to operate efficiently.

More specifically, the NPC study focused on precise topics of immediate impact and concern to the refining industry and recommended appropriate actions that should be taken to ameliorate current and potential problems. These topics and associated recommendations include:

New Source Review

“Immediate implementation of comprehensive NSR reform is a very important policy step needed to improve the climate for investment in domestic refinery expansion. The NSR reforms promulgated by the Administration, including the Equipment Replacement Rule currently under judicial review, should be implemented as soon as possible. Attempts to delay or overturn the reforms

should be vigorously opposed. Additional NSR reform proposals regarding de-bottlenecking and product aggregation should be issued and finalized.”

National Ambient Air Quality Standards

“The U.S. Environmental Protection Agency (EPA) should revise the NAAQS compliance deadlines and procedures to take full advantage of emissions reduction benefits from current regulatory programs such as cleaner fuels/engines and reduction of regional emissions transport. As currently structured, attainment deadlines precede the benefits that will be achieved from emissions reductions already planned...The current deadlines could result in:

- Requirements for additional emissions offsets for any refinery modifications, reducing the economic attractiveness of investment in refinery capacity expansion
- Additional investment in stationary controls at refineries, reducing the overall profitability and viability of domestic refining versus imports
- Additional requirements for boutique fuels...”

Implementation of Ultra Low Sulfur Diesel (ULSD) Regulations

“...there are concerns about meeting Ultra Low Sulfur Diesel (ULSD) demand during the transition to the 15 ppm maximum sulfur specification beginning in mid-2006...”

To reduce the potential for supply disruption, EPA should work with the Department of Energy (DOE) and the various fuels supply industries to consider emerging information about the behavior of ULSD moving through the entire distribution system and to consider how to achieve the goals of the program while recognizing distribution system realities. EPA's current testing tolerance for ULSD should be adjusted to reflect the reproducibility of the tests that will be available for regulatory compliance; otherwise, enforcement actions based on testing inaccuracy may result in disruption to the supply system."

National Energy Legislation

"The NPC recommends passage of national energy legislation as embodied in the 108th Congress report on HR. 6 as the vehicle with the highest probability of obtaining prompt action on the reformulated gasoline (RFG) oxygenate, oxygenate liability and boutique fuels issues...

- **Oxygenate Liability.** Congress should enact limited liability protection against defective product claims involving methyl tertiary butyl ether (MTBE) and other federally required additives. This action would eliminate only defective product claims that penalize fuel manufacturers for meeting the Clean Air Act requirements. Negligence and other traditional causes of actions for MTBE cleanup would be unaffected.
- **Boutique Fuels.** Requests for specialty fuels formulations, whether driven by NAAQS or other wise, should be approved only where such programs are necessary and cost-effective relative to other emissions

reduction options...Repeal of the 2% oxygenation requirement for RFG could eliminate much of the incentive for boutique fuel proliferation...DOE and EPA should conduct a joint study of the boutique fuel issue, with participation by the stakeholders...This study should provide important information on the impact of boutique fuels on fuel production and distribution.”

Sound Science, Cost Effectiveness, and Energy Analysis

“The 2000 NPC refining report recommended that: ‘Regulations should be based on sound science and thorough analysis of cost effectiveness.’

Executive Order 13211, signed by President Bush in 2001, requires agencies to prepare a ‘Statement of Energy Effects’ including impacts on energy supply, distribution and use, when undertaking regulatory actions. The NPC recommends that Executive Order 13211 be made law and strictly enforced. The NPC is not suggesting elimination or rollback of environmental requirements, but rather that the cost analysis of proposed regulations should include a thorough analysis of energy supply effects from production to end-use. Examples of regulations that the NPC does not believe reflect a thorough analysis of the energy supply effects include ULSD and NAAQS regulations. As a result, implementation of these regulations may impose unintended costs without commensurate benefit...”

Permitting

Streamlining the permitting process would help improve the environment for domestic refining capacity investment...(A)ctivities...to review the processes and identify streamlining opportunities should include industry and other stakeholders. Streamlining should provide for expeditious overall review and a clearly defined process for obtaining a permit, with agency roles and responsibilities well-defined and specific deadlines for making permit decisions.”

Depreciation Schedule Adjustment

“Adjusting the depreciation schedule for all refining equipment to five years from the current ten years, consistent with the treatment of similar process equipment in other manufacturing industries, would have a positive impact on expansion investment economics...helping to offset the historically low returns in the refining/marketing business that have hindered investment in capacity expansion...The depreciation adjustment should be applied to all new domestic refining investment...The depreciation schedules for petroleum pipelines and storage facilities should be similarly reduced.”

Fuel Waivers and Enforcement Discretion

“Use of exemptions, exceptions and waivers should be limited to serious supply disruptions that affect end users’ ability to obtain petroleum products...Proposed guidance on waivers has been recently released by EPA as a first step in this process...”

Alternative Fuels

“Mandates or subsidies for alternative fuels increase uncertainty and reduce the incentive for investment in additional domestic petroleum refining capacity.

Therefore, these mandates and subsidies may not reduce petroleum product imports as intended and could increase the cost to consumers.”

Distillation and Driveability Index

“The 2002 NPC refining report recommended that the Driveability Index not be changed without thoroughgoing additional analysis. To date, EPA has resisted automakers’ calls for a reduction in Driveability Index, or a change to Distillation Index (Driveability Index plus an ethanol adjustment). EPA should continue this position. A reduction in Driveability or a change to Distillation Index could result in a significant reduction in domestic refinery gasoline producibility.”

Site Security

“Site security enhancement should remain an industry responsibility with ongoing risk assessment coordinated with the Department of Homeland Security, which should retain the lead federal coordination role. Refining industry participants are committed to keeping their facilities secure from threats of violence and terrorism. Refiners have expended substantial resources to enhance security and expect to continue to do so. There are proposals being discussed to include provisions for refining technology changes and criminal liability. In the opinion of the NPC,

these provisions do not provide an additional security benefit but have the potential to negatively impact light product production capability.”

In addition, the 2004 report re-emphasized the need to implement the recommendations of the NPC 2000 refining study. **NPRA, both as a participant in the study and whose members are directly impacted by these and other issues, firmly endorses these findings and recommendations and urges Congress to play an instrumental role in assuring their adoption and implementation. We ask that this subcommittee hold a hearing on the NPC studies at the earliest possible opportunity. We are attaching a copy of the Executive Summary of the study to this testimony.**

Summary

In conclusion, NPRA would like to stress that energy is a strategic commodity. The world measures a nation by its economic health, its national security, its quality of life, and its ability to develop and implement new ideas. Our nation is at a point where its future capabilities may very well rest on a stable supply of fuels and other forms of energy at reasonable prices. To succeed, we and other energy suppliers must have the support of the American people. This is a link that must be forged. All Americans want and expect clean air and pure water, but we also want to fuel our industries, heat our homes and compete successfully

in an ever-demanding international marketplace. NPRA is certain that by working with Congress to enact both fair and far-reaching comprehensive energy legislation, we can begin this process in earnest. And enactment of the fuels provisions in the Energy Policy Act of 2005 is a good place to start.